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CONTRACTS TO PERFORM TO THE SATISFACTION OF THE OTHER PARTY IN ANOTHER STATE. — A contract to furnish goods to the satisfaction of the other party is, by the general rule, undischarged so long as that party is honestly dissatisfied with them.[1] In New York and a few other states, however, performance to the satisfaction of a jury discharges such a contract, unless involving matters of taste.[2] Whether the New York rule is one of construction or of positive law is not wholly clear. There is talk in several cases[3] of a genuine search after the parties' intention, and no actual holding is irreconcilable with it. But positive rules couched in terms of construction are not unknown to the law. A layman would not easily be persuaded that "to my satisfaction" really bears a double meaning. In the absence of such a phrase the law would require performance to the satisfaction of a jury anyhow. Moreover, the rule undeniably first took shape as one in defiance of intention.[4] "That which the law shall say a contracting party ought in reason to be satisfied with, that the law will say he is satisfied with,"[5] — is an early judicial formula, much quoted.

Assuming, then, that this is a rule of the positive law of contract, it may be further analyzed. Does it operate upon the creation of contract, or is it concerned alone with performance? Does New York raise an obligation different from that expressed, and bind the promisor only to satisfy either his promisee or a jury, or does New York create an obligation precisely as stipulated, and permit it afterwards to be discharged in a different way?

[1] Inman Mfg. Co. *v.* American Cereal Co., 124 Ia. 737.

[2] Duplex Safety Boiler Co. *v.* Garden, 101 N. Y. 387. See Wald's Pollock, Contracts, 3 ed., 51 n. See also 9 Cyc. 618, 620.

[3] See Doll *v.* Noble, 116 N. Y. 230; Russell *v.* Allerton, 108 N. Y. 288; Hummel *v.* Stern, 21 N. Y. App. Div. 544; aff. 164 N. Y. 603. *Cf.* Nolan *v.* Whitney, 88 N. Y. 648.

[4] Folliard *v.* Wallace, 2 Johns. (N. Y.) 395.

[5] City of Brooklyn *v.* Brooklyn City Ry., 47 N. Y. 475, 479.

Under a territorial law it seems fundamental that the creation of a contractual obligation, its validity and magnitude, depends upon the law of the place of making.[6] Once created, its performance is governed by the law of the place of performance, which alone can raise a cause of action for breach, and which (within constitutional limits) may, therefore, alter its performance.[6] An agreement to perform to the promisee's satisfaction, made in a jurisdiction where the usual rule prevails, creates, then, an obligation to satisfy the promisee, no matter where performable; but if performance be in New York, performance there to a jury's satisfaction doubtless discharges the obligation.[7] As to foreign obligations the New York rule is one of performance. But as to those of domestic origin, may not New York refuse to create at home what she condemns from abroad? Does she waste her energy in creating obligations which she shall inevitably modify in the performance? Does she not rather bring them forth just as they shall be performed? Were the law in the habit of writing bargains for persons *sui juris*, this argument would have weight. But when policy requires it to interfere with freedom of contract, the law does not mold over the bargain that offends it, but inexorably strikes it down. It is unscientific to conceive of the law as incorporating into the obligations it raises all the defenses which upon various contingencies it may provide.

That such an analysis may be of vital importance, appears from the facts of a recent Iowa case. The plaintiff by his New York agent agreed in writing in Illinois to install machinery in Iowa to the full satisfaction of the defendant. By Iowa law he would be required to satisfy his promisee; by Illinois law[8] a jury only. In an action for the price the plaintiff offered evidence that the language of the agreement meant "performance which ought to satisfy," and that the defendant had reasonable cause so to understand it. This the court ruled out as violating the parol evidence rule. *Inman Mfg. Co.* v. *American Cereal Co.*, 110 N. W. Rep. 287. Parties normally use language in the sense with which they are familiar, *i. e.*, that of their domicile. They cannot be presumed to mean it in the sense attached thereto in whatever part of the world their contract happens to be performable. To use the parol evidence rule as a means of saddling on the parties the local meaning of the place of performance or of the forum, seems a blind perversion.[9] If this be true matter of interpretation, the court should have heard the evidence. If, again, it be matter of positive Illinois law of the creation of contract, the evidence was equally admissible. When the law of the place of making raises an obligation different from that expressed by the parties, a foreign forum must ascertain its precise extent. But if, as seems sounder, this be matter of performance only; if Illinois raise the obligation just as the parties express it, her collateral rule modifying performance has obviously no application to performance in another state. Having taken the obligation as Illinois created it, it is for Iowa to say whether a different performance shall satisfy it. Iowa says it shall not; the evidence was therefore irrelevant. Under the Illinois doctrine that the creation of contractual obligations is governed by the law of the place of performance, this result would equally follow.[10]

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[6] See 16 HARV. L. REV. 58; 17 *ibid.* 568; Mutual Life Ins. Co. *v.* Cohen, 179 U. S. 262.

[7] Russell *v.* Allerton, *supra.*

[8] Keeler *v.* Clifford, 165 Ill. 544.

[9] See 4 Wig., Ev., § 2463.

[10] Abt *v.* Am. Trust & Savings Bank, 159 Ill. 467.